

Resolution No. 20-02

RESOLUTION OF SOUTH OGDEN CITY APPROVING AN OPERATING AGREEMENT WITH NEUTRON HOLDINGS, INC. DBA "LIME" FOR THEIR LIME SCOOTERS PROGRAM, AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AND FINAL PASSAGE.

WHEREAS, the City Council finds that the City of South Ogden ("City") is a municipal corporation duly organized and existing under the laws of Utah; and,

WHEREAS, the City Council finds that in conformance with Utah Code ("UC") § 10-3-717 the governing body of the city may exercise all administrative powers by resolution including, but not limited to regulating the use and operation of municipal property and programs; and,

WHEREAS, the City Council finds it necessary to address certain alternative transportation needs within the city through the operation of a Lime Scooters operational program; and,

WHEREAS, the City Council finds that the city staff recommends that the city adopt the Operations Agreement with Neutron Holdings and their Lime Scooters operational program to fully address those needs on behalf of the citizens of the City; and,

WHEREAS, the City Council finds that Neutron Holdings has the ability to provide for unique transportation services to meet the city's and residents' needs through their Lime Scooters operational program; and,

WHEREAS, the City Council finds that City now desires to further those ends by approving an Operations Agreement with Neutron Holdings to provide such services; and,

WHEREAS, the City Council finds that the public convenience and necessity requires the actions contemplated,

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SOUTH OGDEN AS FOLLOWS:

SECTION II - CONTRACT AUTHORIZED

That The "Interim Operating Agreement" With Neutron Holdings, Inc. dba "Lime" For The Lime Scooters Operational Program Within The City, Attached Hereto As Attachment "A" And By This Reference Fully Incorporated Herein, Is Hereby Approved And Adopted; And That The City Manager Is Authorized To More Fully Negotiate Any Remaining Details Under The Agreement On Behalf Of The City And Then To Sign, And The City Recorder Authorized To Attest, Any And All Documents, Reasonably Necessary To Effect This Authorization And Approval.

The foregoing Recitals are incorporated herein.

SECTION III - PRIOR ORDINANCES AND RESOLUTIONS

The body and substance of all prior Resolutions, with their provisions, where not otherwise in conflict with this Resolution, are reaffirmed and readopted.

SECTION IV - REPEALER OF CONFLICTING ENACTMENTS

All orders, and Resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which conflict with this Resolution, are, for such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part repealed.

SECTION V - SAVINGS CLAUSE

If any provision of this Resolution shall be held or deemed or shall be invalid, inoperative or unenforceable such shall not render any other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Resolution being deemed the separate independent and severable act of the City Council of South Ogden City.

SECTION VI - DATE OF EFFECT

This Resolution shall be effective on the 17th day of March, 2020, and after publication or posting as required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY,
STATE OF UTAH, on this 17th day of March, 2020.**

SOUTH OGDEN CITY

Russell Porter
Mayor

ATTEST:

Leesa Kapetanov, CMC
City Recorder

ATTACHMENT “A”

RESOLUTION NO. 20-02

Resolution Of South Ogden City Approving An Operating Agreement With Neutron Holdings, Inc. dba “Lime” For Their Lime Scooters Program, And Providing That This Resolution Shall Become Effective Immediately Upon Posting And Final Passage.

17 Mar 20

INTERIM OPERATING AGREEMENT

This Interim Operating Agreement (the “Agreement”) is entered into by and between Neutron Holdings, Inc. dba “Lime”, located at 85 2nd Street, 1st Floor, San Francisco, CA 94105 (“Company”), and South Ogden City, a Utah municipal corporation located at 3950 Adams Ave., South Ogden, UT, 84403 (the “City”) as of March 17, 2020 (the “effective date”), shall remain in effect for a period of ninety (90) days, and shall automatically renew for successive one month terms thereafter unless terminated by either party.

1. Definitions:

For purposes of this agreement, the following terms have the meanings provided.

Frontage zone: means the area where the façade of a building is located fronting the street and the space immediately adjacent to the building, where doors, street display of goods and sidewalk dining may be located.

Furniture zone: means the hard surface area between the back of curb and the pedestrian clear zone, where street furniture and amenities such as lighting, trees, utility poles, bicycle parking and transit stops may be located.

Landscape strip: means the area between the back of curb and the pedestrian clear zone that is not hard surfaced.

Paved shoulder: means the paved area of a street between the travel lane and the curb or, if there is no curb, the edge of pavement.

Pedestrian clear zone: means the primary dedicated and accessible pathway that runs parallel to the street and that is no less than 6 feet wide. If a sidewalk is six feet wide or less, the pedestrian clear zone is the entire width of the sidewalk.

Site triangle: means that portion of a street corner lying within a triangular area formed by measuring back along each of the curb lines to a point forty feet from the intersection of said curb lines, and then connecting the points thus established with a third line.

Shared Personal Transportation Device: means a stand-up electric scooter, a bicycle or an electric assisted bicycle

Stand-up electric scooter: means a device with no more than two ten-inch or smaller diameter wheels that has handlebars, is designed to be stood upon, and is powered by an electric motor that is capable of propelling the device with or without human propulsion at a speed no more than twenty (20) miles per hour on a paved level surface.

2. Statement and Purpose

The purpose of this Agreement is to establish interim rules and regulations governing the operation of Shared Personal Transportation Devices (SPTD) within the City and to ensure that mobility sharing systems are consistent with the safety and well-being of bicyclists, pedestrians, and other users of the public right-of-way.

3. Scope

This Agreement applies to Company's proposed deployment of an SPTD sharing system within the City's jurisdictional boundaries. Nothing in this Agreement requires Company to deploy a particular type of SPTD or to deploy SPTDs in a particular location.

4. Fees

As compensation for the use of the right-of-way for parking of SPTDs, Company shall pay City ten cents (\$ 0.10) per ride rental within the City. Payments under this section will be made on a monthly basis. This fee shall be in addition to, and not in lieu of, any business license or other applicable fee or charge.

5. Procedures

- (a) Within 15 days of the effective date of this Agreement, the Company shall provide an affidavit of compliance with the rules in this Agreement until Operating Regulations are formally promulgated.
- (b) City shall establish Operating Regulations governing the operation of SPTD sharing systems. Company shall be required to comply with this Agreement and with the Operating Regulations as they may be amended from time to time.
- (c) If there is a conflict between the Operating Regulations and the terms of this Agreement, the Operating Regulations shall take precedence.

6. Operating Regulations

- (a) Each SPTD shall have a unique identifying number that is readily visible to a rider or any member of the public.
- (b) Company shall provide easily visible contact information, including toll-free phone number and e-mail address on each SPTD for City employees and/or members of the public to make relocation requests or to report other issues with devices.
- (c) Company shall not allow any 3rd party advertising on its SPTDs.
- (d) City may, at any time and at City's sole discretion, amend operating regulations, parking guidelines and operations requirements if those amendments are uniform for all providers of SPTDs in the City. City shall provide Company with thirty (30) days prior written notice to comment on such amendments prior to the effective date of the amended regulation.

7. Deployment and Parking Guidelines

Company acknowledges and understands the following rules for Company's deployment of SPTDs and where riders may park SPTDs. While Company is not responsible for the decisions of its customers in parking an SPTD at the end of a rental, Company will provide notice to its customers with the following parking rules.

- (a) Locations where deployment and parking is **NOT** allowed:
 - (1) SPTDs shall not be parked in the landscape strip nor shall they be parked in the furniture zone directly adjacent to or within the following areas, such that access is impeded (access is presumed to be impeded if the scooter is within five feet of any of these areas):
 - (A) Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
 - (B) Loading zones;
 - (C) Disabled parking zone;
 - (D) Street furniture that requires pedestrian access (for example - benches, parking pay stations, bus shelters, transit information signs, etc.);
 - (E) Curb ramps;
 - (F) Entryways; and
 - (G) Driveways.
 - (2) SPTDs shall not be parked in the frontage zone or in a manner that would impede or interfere with the reasonable access to or from any building.
 - (3) SPTDs shall not be parked in the sight triangle of an intersection or within 15 feet of a street corner pedestrian ramp.
 - (4) SPTDs shall not be parked in such a manner as to block the pedestrian clear zone of the sidewalk; any fire hydrant, call box, or other emergency facility; bus bench or shelter; or utility pole or box.
 - (5) SPTDs shall not be parked on a street in a location where vehicle parking is limited to 15 minutes or less or where parking is otherwise prohibited, such as in a no parking zone or adjacent to a red painted curb .
- (b) Locations where deployment and parking **IS** allowed:
 - (1) SPTDs shall be parked upright on hard surfaces and, except as provided in subsections 7.B.(2)(b) and (c), in the furniture zone of the sidewalk, including beside a bicycle rack or in another area specifically designated for bicycle parking; provided that an SPTD does not interfere with the reasonable use of the bicycle rack.
 - (2) SPTDs may be parked in an **on-street space** designated for vehicle parking only under the following circumstances:
 - (A) When City has marked parking spaces as officially designated stations for the SPTD program;
 - (B) Where the furniture zone is less than three feet wide;
 - (C) Where there is a landscape strip without a furniture zone;
 - (D) In neighborhoods with rolled curbs, or with inadequate sidewalk space;
 - (E) In marked parking spaces designated for motorcycles.
 - (3) SPTDs may be parked on blocks without sidewalks only if the paved shoulder is at least eight feet wide, the scooter is not parked adjacent to a red painted curb and the scooter does not impede pedestrian traffic.

- (c) Parking outside of City Right of Way: To the extent Company desires to deploy or have its customers park SPTDs in areas other than the public right-of-way (e.g. parks, plazas, parking lots, private property, or transit stations), the Company must first obtain the right to do so from the appropriate City department, property owner, or public agency and shall communicate this right to riders through signage or other notification approved by the respective entity and/or through a mobile or web application.

8. Operations

- (a) Company shall maintain a 24-hour customer service phone number for customers to report safety concerns, complaints, or to ask questions.
- (b) Company will implement a marketing and targeted community outreach plan at its own cost or, at City's request Company shall pay an in-lieu fee to the City to provide these services, to promote the proper and safe use of SPTD sharing citywide.
- (c) If a safety or maintenance issue is reported for a specific device, that SPTD shall be made unavailable to riders and shall be removed within the timeframes provided herein. Company shall repair any inoperable or unsafe SPTD before it is put back into service.
- (d) Company shall respond to requests for rebalancing, reports of incorrectly parked SPTDs, or reports of unsafe/inoperable SPTDs by relocating, re-parking, or removing the SPTDs, as appropriate, usually within 2 hours, but no later than 4 hours, of receiving notice.
- (e) Company shall remove all SPTDs from the right-of-way during times that a winter storm warning or winter weather advisory is in effect for the Ogden, Utah area when issued by the National Weather Service.
- (f) An SPTD may be removed by City crews and taken to a City facility for storage at the expense of the Company if the SPTD is:
 - i. not relocated, re-parked, or removed within the timeframe specified in Subsection 8(d) or 8(e); or
 - ii. parked in one location for more than 72 hours without moving.
- (g) Company shall reimburse City for any costs incurred in abating any violations of this Agreement, including costs incurred under Section 8(f), or costs of repair or maintenance of public property within 30 days of receipt of an invoice detailing such costs.
- (h) Company shall provide notice to all riders by means of signage and through a mobile or web application that:
 - (1) SPTDs are to be primarily ridden on streets, and where available, in bike lanes and bike paths;
 - (2) SPTDs are to stay to the right of street lanes and, where bike lanes are available, SPTDs should be operated in the bike lane and to offer the right of way to bicycles on bike lanes and bike paths;
 - (3) Helmets are strongly recommended for all riders;
 - (4) Riders shall yield to pedestrians;
 - (5) SPTDs are to be operated in accordance with rules applicable to pedestrians when crossing through crosswalks when vehicular traffic does not have the right of way;
 - (6) Parking must be done in designated areas; and
 - (7) Riding responsibly is encouraged.

- (i) SPTD riders are required to take a photo and submit the photo to Company whenever they park their scooter at the end of a ride.
- (j) Company shall provide education to SPTD riders on the City's existing rules and regulations, safe and courteous riding, and proper parking.
- (k) Company will collaborate with City to address areas where SPTDs are observed to routinely either be in violation of any term of this Agreement or to where demand for SPTDs shows that additional operational changes may be needed.
- (l) Company shall begin operations with a fleet size of not more than 100 SPTDs. Company is permitted to increase its fleet size in increments of up to 25 scooters at a time in the event that Company's fleet provides on average more than three rides per SPTD per day. City may require Company to reduce its fleet size on a monthly basis in the event Company's fleet provides on average less than one rider per SPTD per day. Company shall provide City with data on at least a monthly basis to determine and demonstrate the utilization rate of scooters in the Company fleet.

9. Data Sharing.

Company shall provide City with anonymized fleet and ride activity data for completed trips starting or ending within City on a SPTD owned by Company or of any person or company controlled by, controlling, or under common control with Company, provided that, to ensure individual privacy the trip data:

- (i) is provided via an application programming interface, subject to Company's license agreement for such interface, in compliance with a national data format specification;
- (ii) provided shall be treated as trade secret and proprietary business information, and may not be shared to third parties without Company's consent, and may not be treated as owned by City; and
- (iii) shall be considered private information, and, pursuant to Utah Code section 41-6a-1115.1, may not be disclosed under Title 63G, 806 Chapter 2, Government Records Access and Management Act, pursuant to a public records request received by City without prior aggregation or obfuscation to protect individual privacy.

10. Contact Information.

The official addresses for providing notice to each party is as follows, and may be changed at any time by providing notice to the other party:

Company:

Neutron Holdings, Inc.
85 2nd Street, 1st Floor
San Francisco, CA 94105

City:

South Ogden City
3950 Adams Ave.
South Ogden, UT, 84403

The parties intend that much of the coordination and implementation of the terms of this Agreement will not require official notice. Contact information for such matters are as follows:

Company:

Jonathan Hopkins (360) 957-5468
Nate Currey (720) 579-8080

City:

Matt Dixon, City Manager (801) 622-2702
Darin Parke, Police Chief (801) 622-2801

11. Amendments

This agreement may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated in written and executed by duly authorized representatives of the parties.

12. Relationship with City.

- (a) Nothing in this Agreement creates a joint venture, partnership or other joint business relationship between Company and City.
- (b) The City reserves the right to suspend or terminate Company's use of City right of way under this Agreement at any time. Suspension may be for part or all of Company's fleet of SPTDs or for part or all areas within the City. Upon termination under this section, Company shall remove its entire fleet of SPTDs from City streets within 30 days.
- (c) This agreement may be terminated, by either party, for any reason, or for no reason, prior to the expiration date, upon delivery of at least thirty (30) days' written notice to the receiving party prior to the intended date of termination.

13. Indemnification

Company agrees to indemnify, save harmless, and defend City, its elected officials, agents and employees, from all claims, liens, costs, including reasonable attorney fees, losses, or damages (collectively, "Claims"), brought against City and arising out of a negligent act, error, omission, or willful misconduct by Company or Company's employees, except to the extent the claims, demands, costs, losses, or damages arise out of City's negligence or willful misconduct.

14. Insurance

- (a) Company shall provide City with proof of insurance coverage including:
 - (1) Commercial General Liability insurance coverage with a limit of no less than \$1,000,000.00 each occurrence;
 - (2) Automobile Insurance coverage with a limit of no less than \$1,000,000.00 each occurrence;

- (3) Umbrella or Excess Liability coverage with a limit of no less than \$5,000,000.00 each occurrence; and
- (4) where Company employs persons within the City, Workers' Compensation coverage of no less than the statutory requirement. Company may satisfy the minimum liability limits required for Commercial General Liability or Commercial Automobile Liability under an Umbrella or Excess Liability policy.
- (b) Company shall name City, its employees and elected officials as an additional insured on all insurance liability policies.
- (c) In any liability release or waiver executed by a customer who rents an SPTD, Company shall include City, its employees and elected officials, as persons or entities included in such release or waiver.

15. Waiver

City's decision or failure to insist upon strict performance of any provision of this Agreement on one or more occasions shall not constitute a waiver of such provision by the City, nor shall the City relinquish any rights it may have under this Agreement to require performance of such conditions in the future.

16. Severability

Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

17. Governing Law

This Agreement and the performance hereunder shall be governed by the laws of the State of Utah and any litigation under this Agreement shall take place in the Second District Court, Weber County, State of Utah.

18. Integration

This Agreement contains the entire and integrated agreement of the Parties as of its date, and no prior or contemporaneous promises, representations, warranties, inducement, or understandings between the Parties and not contained herein shall be of any force or effect.

19. No Presumption

This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either City or Company. Each Party represents and warrants to the other Party that it has been represented by, and has had the opportunity to consult with, legal counsel in connection with the review, negotiation and execution of this Agreement.

20. Further Acts

In addition to the acts and laws recited herein and contemplated to be performed, executed, and delivered by City and Company, City and Company agree to perform, execute, and deliver or cause to be performed, executed, and delivered any and all such further acts, laws and assurances as may be necessary to consummate the transactions contemplated hereby.

21. Non-liability of City or Agency Officials and Employees.

No member, official, or employee of City shall be personally liable to Company, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Company, or its successor, or on any obligation under the terms of this Agreement

22. Governmental Immunity.

Nothing in this Agreement shall be deemed to constitute or imply a waiver, modification or alteration of the caps or limitations on liability or privileges, immunities or other protection available to a city under the Utah Governmental Immunity Act or such other statutes or laws affording governmental agencies caps or limitations on liability or privileges, immunities or other protections.

23. Authority and Consent.

The Parties represent and warrant that each has the right, legal capacity and authority to enter into, and perform its respective obligations under this Agreement, and that no approvals or consents of any other person, other than the respective Party, are necessary.

Neutron Holdings, Inc. dba "Lime"

South Ogden City, a Utah Municipal Corporation

By: Jessie Lucci

By: Matthew Dixon

Its: Regional General Manager--West

Its: City Manager

Attest: _____